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PL 1354

# The State of South Carolina



## Office of the Attorney General

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January 16, 1985

W. Clarkson McDow, Jr., Esquire  
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Dear Mr. McDow:

In a letter to this Office you raised a question concerning the authority of the City of Tega Cay to enforce a certain city ordinance and a State statute on that portion of Lake Wylie which lies within the municipal limits of Tega Cay. In the memorandum which you forwarded to this Office you particularly referenced an incident involving a hunter where a question was raised as to the authority of the City to enforce its ordinance prohibiting the discharging of a firearm within the municipal limits and the State statute, namely Section 50-11-3011 of the Code, which designates the City of Tega Cay as a bird sanctuary. At the time of the incident the hunter, who questioned the authority of Tega Cay to enforce the referenced ordinance and State statute, was on the shore below the high water mark of Lake Wylie. As a result of such incident, you have specifically questioned whether the City of Tega Cay has the authority to enforce the referenced municipal ordinance and Section 50-11-3011 on that part of the City which lies below the high water mark of Lake Wylie but within the municipal limits of Tega Cay. In responding to your question, please be advised that it is the policy of this Office in responding to opinion requests not to resolve factual issues. See Op. Atty. Gen. dated December 12, 1983. Therefore, this opinion should not be construed in any respects as commenting on the actual boundaries of the City of Tega Cay.

In a previous opinion of this Office, a letter to the city attorney for Ware Shoals dated September 7, 1983, the question was raised as to whether the police power of the Town of Ware Shoals extended to locations in the bed of the Saluda River. As

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described by the attorney requesting the letter, a portion of the Saluda River was considered to be within the corporate limits of the Town of Ware Shoals. The opinion indicated that according to the State Water Resources Commission, the Saluda River at Ware Shoals was considered to be navigable water. The referenced opinion stated:

"(a) check of a number of authorities indicates that while municipal corporations may exercise police power over navigable waters, the authority to do so must be delegated by the State. See: 65 C.J.S. Navigable Waters, § 10. In this State there is no statute which provides for such authorization, although § 5-7-140 and 5-7-150 do authorize the exercise of such powers in the case of coastal municipalities.

The opinion recommended that due to this "gap" in municipal law enforcement authority, legislation be sought to remedy this lack of authority.

I have also checked with the State Water Resources Commission and was informed that Lake Wylie is also considered to be navigable water. Referencing such determination, consistent with the above previous opinion of this Office, it appears that the City of Tega Cay similarly lacks authority to exercise police power over any portion of Lake Wylie which lies within the municipal limits in the absence of specific legislation authorizing such.

As to your specific question concerning the authority of the City of Tega Cay to enforce its particular ordinance in that part of the City which lies below the high water mark of Lake Wylie but within the municipal limits of the City, generally all lands lying below the mean high water mark of navigable streams are considered to be subject to the public trust in the State for public purposes. Shands v. Triplet, 5 Rich. Eq. 76 (1852). Referencing such, it appears that absent specific authorization for the exercise of police power by Tega Cay on the lands lying below the mean high water mark of Lake Wylie, there is no authority for the enforcement by the municipality of its ordinance prohibiting the discharging of a firearm within the municipal limits. As in the opinion referenced, the municipality may consider seeking legislation to remedy this lack of authority.

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However, as to Section 50-11-3011, which is a State statute designating Tega Cay as a bird sanctuary, it appears that such statute is enforceable upon that portion of Lake Wylie which lies within the municipal limits of Tega Cay by any law enforcement officer. Inasmuch as Section 50-11-3011 is a State statute, the problem with the general lack of authority, unless otherwise expressly granted, of a municipality to exercise control over navigable waters is not present.

If there are any questions, please advise.

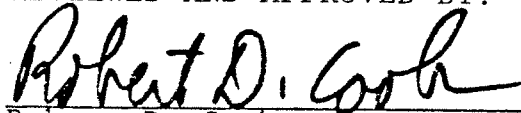
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:djg  
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions